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Human Rights Council
Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its sixty-seventh session, 26–30 August 2013

No. 29/2013 (Tunisia)

Communication addressed to the Government on 26 June 2013

Concerning: Jabeur Mejri

The Government has not replied to the communication.

The State is a party to the International Covenant on Civil and Political Rights.

1. The Working Group on Arbitrary Detention was established by the Commission on Human Rights pursuant to resolution 1991/42. The Commission then clarified and extended the Working Group's mandate by resolution 1997/50. The Human Rights Council assumed the Working Group's mandate in its decision No. 2006/102 and extended it for a further three-year period by resolution 15/18 of 30 September 2010. In accordance with its methods of work, the Working Group transmitted the above-mentioned communication to the Government.

2. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to the detainee) (category I);

(b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

(c) When the total or partial non-observance of the international norms relating to the right to a fair trial established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned is of such gravity as to give the deprivation of liberty an arbitrary character (category III);

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(d) When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);

(e) When the deprivation of liberty constitutes a violation of international law for reasons of discrimination based on birth; national, ethnic or social origin; language; religion; economic condition; political or other opinion; gender; sexual orientation; or disability or any other status and aims towards or can result in ignoring the equality of human rights (category V).

Submissions

Communication from the source

3. The case below was submitted to the Working Group on Arbitrary Detention in the following terms.

4. Mr. Jabeur Mejri, a Tunisian national born on 23 August 1984, usually resides in Alsalam Street, Al Zahraa, Mahdia, Tunisia, where he works as a blogger.

5. On 5 March 2012, the Mahdia police asked Mr. Mejri to report to the police station, where he was then arrested and taken into custody. The source does not know whether he was shown an arrest warrant. Mr. Mejri is still being held in Mahdia prison.

6. According to the source, Mr. Mejri was arrested in response to a complaint lodged against him by two lawyers from Mahdia who had seen messages and images of the prophet Muhammad that he had posted on the Internet. In their complaint, the lawyers claimed that the messages published by Mr. Mejri had offended the prophet and Muslims and created discord (*fitna*) among Muslims. They asked for an investigation to be opened into the messages.

7. Mr. Mejri was questioned on 5 and 7 March 2012. According to the court documents examined by the source, Mr. Mejri indicated during the interrogation that the images he had published came from one of his friends, Mr. Ghazi Beji, a self-proclaimed atheist. Mr. Beji was therefore indicted on 9 March 2012 for the messages posted on the Internet and for his manuscript entitled "*L'illusion de l'islam*" (The illusion of Islam). On 12 March 2012, Mr. Beji was summoned to appear before the Mehdia court of first instance but, fearing for his safety, he had already fled the country.

8. On 9 March 2012, the Mehdia court of first instance ordered that an investigation be conducted into the case against Mr. Mejri. On 28 March 2012, the court concluded that Mr. Mejri and Mr. Beji were both guilty under articles 121 paragraph 3, and 226 of the Criminal Code and article 86 of the Telecommunications Code of having "disseminated writings intended to disturb public order", "caused harm to others or insulted them through the public telecommunications networks" and "offended sacred values by actions or words". Both men were given the maximum sentence for each of the charges, amounting to a total of 7 years 6 months' imprisonment and a fine of 1,200 Tunisian dinars (approximately US$ 757).

9. The two men's lawyers appealed against the court's decision, but on 23 June 2012, the Monastir court of appeal upheld the convictions and the sentences. Mr. Mejri's lawyer submitted his case to the court of cassation of Tunis. On 25 April 2013, the court of cassation allowed a request from Mr. Mejri to withdraw his appeal. Mr. Mejri's conviction by the court of appeal was therefore upheld.

10. The source indicates that Mr. Mejri had sent his request to withdraw the appeal from prison on 8 April 2013, before the court of cassation had set a date for the hearing of his case because, given the expected time frame, he had given up all hope that the court would

set a date for his case to be reviewed. He only found out later that the court had finally scheduled a hearing for 25 April 2013. The source states that, once the case was withdrawn from the court of cassation, the only remaining option for Mr. Mejri to be released was a presidential pardon.

11. The source argues that Mr. Mejri is a prisoner of conscience, detained for having exercised his right to freedom of opinion and expression. The source calls for his immediate and unconditional release. In the source's opinion, the criticism of religions and other beliefs and ideas is an essential component of the right to freedom of expression. Accordingly, laws such as those on blasphemy that criminalize criticism of or insults to religious beliefs violate the freedom of expression.

12. The source maintains that, over the past two years, the Tunisian authorities have repeatedly invoked articles 121, paragraph 3, and 226 of the Criminal Code and article 86 of the Telecommunications Code to restrict the freedom of expression, targeting journalists, artists and bloggers. The source reports that these laws, which date back to the time of President Ben Ali, establish penalties for the offences of "violating sacred values" and "disturbing public order and morals".

13. According to the source, the third draft of the new constitution, currently being drawn up by the National Constituent Assembly and published in April 2013, does not fully protect the right to freedom of expression as provided for by international human rights standards, particularly article 19 of the International Covenant on Civil and Political Rights, to which Tunisia is a party. The source is of the opinion that the draft Tunisian constitution does not clearly establish that any restrictions on the freedom of expression must be manifestly necessary and proportionate to the purpose of the restriction. In the opinion of the source, the absence of such clarification leaves the door open to possible unwarranted restrictions on this right.

Response from the Government

14. By letter dated 26 June 2013, the Working Group asked the Government to respond to these allegations. No response was received within the 60-day deadline, nor was any extension requested. In these circumstances, the Working Group considers that it has grounds to render an opinion on the basis of the information available before it.

Discussion

15. The source bases the allegations primarily on the fact that Mr. Mejri was convicted for having posted on the Internet a document entitled "*L'illusion de l'islam*" (The illusion of Islam), containing messages and images of the prophet Muhammad that were deemed offensive and likely to create discord between Muslims. Following the investigation, Mr. Mejri was sentenced to 7 years 6 months' imprisonment for having broadcast writings intended to disrupt public order, caused harm to others and insulted them through the public telecommunications networks, and for having offended sacred values by actions or words. The sentence was upheld on appeal.

16. The question at issue concerns the freedom of expression under article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights which, in its paragraph 3, states that: "The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order (*ordre public*), or of public health or morals."

17. In the present case, even for the purpose of prosecuting and punishing offences related to religion, no exceptions may be allowed other than those provided for in the above provisions. For this reason, the Working Group regrets that the Government has not replied to provide more clarity on this point.

18. Thus, when analysed, the evidence submitted does not produce clear and coherent facts to substantiate the case against Mr. Mejri. Furthermore, the Working Group has always considered that vague definitions that allow a broad interpretation of the provisions of article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights cannot be considered admissible, particularly because the right and the freedom to criticize a religion cannot, of themselves, constitute a violation of the fundamental right to freedom of expression.

19. On the basis of the above, the Working Group considers that Mr. Jabeur Mejri was arrested and sentenced for having expressed his opinions on Islam and its prophet without it being established that, in so doing, he had undermined respect for the rights or reputations of others or the protection of national security or public order, health or morals, which are the only admissible exceptions in this matter.

Disposition

20. In the light of the above, the Working Group renders the following opinion:

> Mr. Mejri's detention is arbitrary and falls within category II of the criteria applicable to the consideration of cases submitted to the Working Group; and is in breach of article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights.

21. Consequent upon the opinion rendered, the Working Group requests the Government to release Mr. Mejri forthwith, to provide him with reparation for the harm caused by his detention and to cooperate more fully with it in the future, in keeping with the relevant resolutions of the Human Rights Council.

[*Adopted on 30 August 2013*]